

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

03 12240 REK

Barrow Industries Inc.,  
Plaintiff

v.

Civil Action No. \_\_\_\_\_

J. C. Penney Company, Inc.  
and  
Victoria Classics Ltd.,  
Defendants

MAGISTRATE JUDGE

Cohen

COMPLAINT

Plaintiff, as its complaint, alleges the following:

1. Plaintiff, Barrow Industries Inc., is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, and has its principal place of business at 3 Edgewater Drive, Norwood, Massachusetts 02062.

2. On information and belief, defendant, J. C. Penney Company, Inc., is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 6501 Legacy Drive, Plano, Texas 75024-3698 (and a mailing address of P.O. Box 10001, Dallas, Texas 75301-1115).

5/6/84  
AMOUNT \$150  
SUMMONS ISSUED Yes  
LOCAL RULE 4.1  
WAIVER FORM  
MCF ISSUED  
BY DPTY CLK FOM  
11/13/03

3. On information and belief, defendant, Victoria Classics Ltd., is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 277 Fifth Avenue, New York, New York 10016.

4. This court has jurisdiction of the subject matter of this claim under the provisions of Title 28, United States Code §1338(a), because this action arises under an Act of Congress relating to Copyrights, the Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2598, Title 17, United States Code §§101 et seq.

5. This Court has jurisdiction over both defendants because defendants have transacted business in Massachusetts; defendants have contracted to supply fabric materials in Massachusetts; defendants have caused tortious injury to plaintiff by advertising, selling and delivering fabric materials in Massachusetts; defendants have caused tortious injury in Massachusetts to plaintiff by advertising, selling and delivering fabric materials outside of Massachusetts while defendants regularly do or solicit business in Massachusetts and/or engage in other persistent courses of conduct in Massachusetts, and/or derive substantial revenue from fabric materials sold in Massachusetts; and this action arises from these activities.

6. Plaintiff is a marketer of fabric materials. In 2001, an employee of plaintiff's created an original fabric design, entitled "M 5789" (hereafter called Plaintiff's Design).

7. Plaintiff's Design contains considerable material wholly original with plaintiff and is copyrightable subject matter under the Copyright Act of 1976.

8. Plaintiff first published (i.e. marketed) fabric incorporating Plaintiff's Design on January 1, 2002. A photocopy of a sample of Plaintiff's Design is attached hereto as Exhibit A.

9. Plaintiff's Design was made the subject of an application which matured into United States Copyright Registration Certificate No. VA 1-148-737, issued by the Register of Copyrights on April 30, 2002, a copy of which is attached hereto as Exhibit B.

10. Since January 1, 2002, plaintiff has been and still is the sole proprietor of all right, title and interest in and to the copyright of Plaintiff's Design. Since January 1, 2002, plaintiff has been and still is the sole owner of all right, title and interest in and to the copyright registration of Plaintiff's Design.

11. Plaintiff has complied with all statutory requirements in securing federal statutory copyright for Plaintiff's Design under the Copyright Act of 1976.

12. After January, 1, 2002, defendants, with full actual knowledge of, and with full access to, the copyrighted Plaintiff's Design, willfully infringed plaintiff's copyright in Plaintiff's Design by copying Plaintiff's Design and by marketing defendants' fabric materials incorporating Plaintiff's Design (hereinafter called Defendants' Copied Fabric Materials). Defendants' copying was without the consent of plaintiff. Defendants' Copied Fabric Materials bear a fabric design which is virtually identical to plaintiff's fabric materials incorporating Plaintiff's Design. Copies of various materials showing Defendants' Copied Fabric Materials are attached hereto as Exhibit C.

13. Plaintiff has notified defendants that defendants have infringed plaintiff's copyright, but defendants have refused to cease infringing and have continued to willfully infringe plaintiff's copyright.

14. Defendants' wrongful activities constitute a violation of the United States Copyright Act.

WHEREFORE, PLAINTIFF PRAYS:

1. That defendants be held to have violated Title 17, United States Code §101 et seq. by reason of defendants' willful copyright infringement.
2. That defendants be enjoined during the pendency of this action and permanently from infringing said copyright of said plaintiff in any manner, and from purchasing, importing, making, having made, selling, marketing, shipping or advertising Defendants' Copied Fabric Materials or any materials bearing Plaintiff's Design.
3. That defendants, at the election of plaintiff, said election to be made at any time before entry of final judgment, as authorized by Title 17, United States Code §504, be required to pay damages to plaintiff of either:
  - a. such actual damage as plaintiff has sustained as a consequence of defendants' infringement of plaintiff's copyright, together with any profits of defendants that are attributable to said infringement and are not taken into account in computing said actual damages; or

b. statutory damages in the sum of \$100,000 for defendants' willful infringement of plaintiff's copyright.

4. That defendants be required to deliver up for destruction all of Defendants' Copied Fabric Materials and all other materials which infringe upon plaintiff's copyright, as well as all articles by means of which such infringements were or could be made.

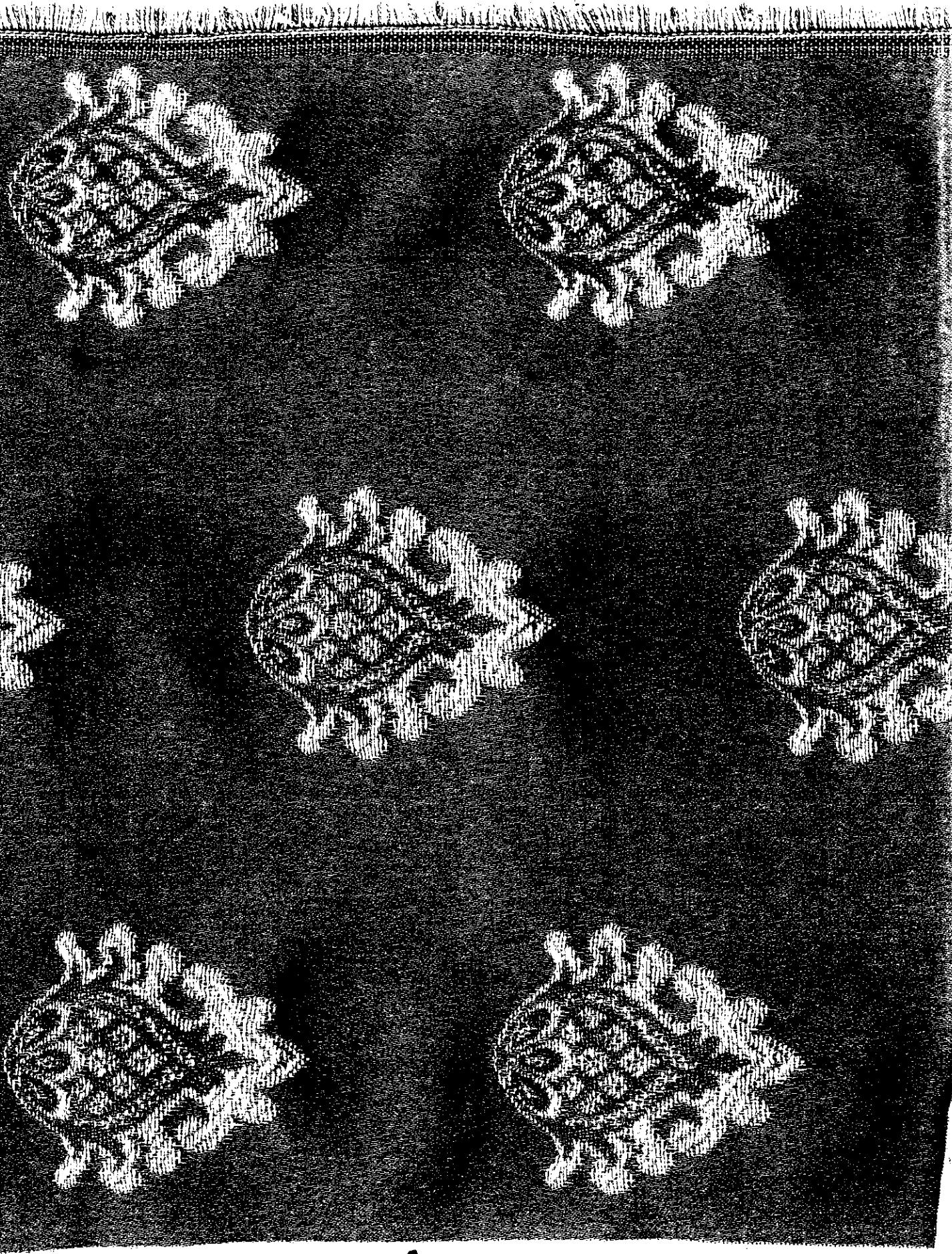
5. That defendants be required to pay to plaintiff the full costs of this action, including a reasonable attorney's fee, as authorized by Title 17, United States Code §505.

6. That plaintiff be awarded such other and further relief as the Court deems just or equitable in the circumstances.



I. Stephen Samuels  
B.B.O. No. 440200  
Samuels, Gauthier & Stevens LLP  
225 Franklin Street, Suite 3300  
Boston, MA 02110  
Tel: 617-426-9180 (Ext. 107)  
Fax: 617-426-2275  
Email: ISS@SamuelsTM.com  
Attorney for Plaintiff

0587.03G



A



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

REGISTER OF COPYRIGHTS

United States of America

OFFICIAL SEAL

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

## TITLE OF THIS WORK ▼

M 5789

## PREVIOUS OR ALTERNATIVE TITLES ▼

**Publication as a Contribution** If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared      Title of Collective Work ▼

If published in a periodical or serial give:      Volume ▼      Number ▼      Issue Date ▼      On Pages ▼

## NAME OF AUTHOR ▼

Barrow Industries Inc. dba  
Merrimac Textile Co.

## DATES OF BIRTH AND DEATH

Year Born ▼      Year Died ▼

Was this contribution to the work a "work made for hire"?

 Yes No

Author's Nationality or Domicile  
Name of Country

OR  
Citizen of ▶  
Domiciled in ▶

U.S.A.

## Was This Author's Contribution to the Work

Anonymous?      Yes       NoPseudonymous?      Yes       No

If the answer to either of these questions is "Yes," see detailed instructions

## NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

<input type="checkbox"/> 3-Dimensional sculpture	<input type="checkbox"/> Map	<input type="checkbox"/> Technical drawing
<input checked="" type="checkbox"/> 2-Dimensional artwork	<input type="checkbox"/> Photograph	<input type="checkbox"/> Text
Reproduction of work of art	<input type="checkbox"/> Jewelry design	<input type="checkbox"/> Architectural work

## NAME OF AUTHOR ▼

## DATES OF BIRTH AND DEATH

Year Born ▼      Year Died ▼

Was this contribution to the work a "work made for hire"?

 Yes No

Author's Nationality or Domicile  
Name of Country

OR  
Citizen of ▶  
Domiciled in ▶

## Was This Author's Contribution to the Work

Anonymous?      Yes       NoPseudonymous?      Yes       No

If the answer to either of these questions is "Yes," see detailed instructions

## NATURE OF AUTHORSHIP Check appropriate box(es). See instructions

<input type="checkbox"/> 3-Dimensional sculpture	<input type="checkbox"/> Map	<input type="checkbox"/> Technical drawing
<input type="checkbox"/> 2-Dimensional artwork	<input type="checkbox"/> Photograph	<input type="checkbox"/> Text
Reproduction of work of art	<input type="checkbox"/> Jewelry design	<input type="checkbox"/> Architectural work

Year in Which Creation of This Work Was Completed

2001

This information must be given in all cases.

## Date and Nation of First Publication of This Particular Work

Complete this information      Month ▶ January      Day ▶ 1      Year ▶ 2002  
ONLY if this work has been published.

U.S.A.

◀ Nation

## COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

Barrow Industries Inc. dba  
Merrimac Textile Co.  
3 Edgewater Drive, Brookside Pk.  
Norwood, Massachusetts 02062

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE  
OFFICE USE ONLY

APR 30 2002

ONE DEPOSIT RECEIVED

APR 30 2002

TWO DEPOSITS RECEIVED

FUND RECEIVED

## MORE ON BACK ▶

- Complete all applicable spaces (numbers 5-9) on the reverse side of this page
- See detailed instructions
- Sign the form at line 8

DO NOT WRITE HERE

Page 1 of 1 pages

B

EXAMINED BY  
CHECKED BY

CORRESPONDENCE  
Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

**DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.**

**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No  If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

- a.  This is the first published edition of a work previously registered in unpublished form.
- b.  This is the first application submitted by this author as copyright claimant.
- c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

**DERIVATIVE WORK OR COMPILED** Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼

See instructions  
before completing  
this space.

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

Samuels, Gauthier & Stevens LLP DA063789

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name Address Apt/City/State ZIP ▼

Naomi W. Norcott  
Samuels, Gauthier & Stevens LLP  
225 Franklin Street, Suite 3300  
Boston, MA 02110

Area code and daytime telephone number ▶ ( ) (617) 426-9180

Fax number ▶ ( )

Email ▶

**CERTIFICATION\*** I, the undersigned, hereby certify that I am the

check only one ▶

{ author  
other copyright claimant  
owner of exclusive right(s)  
authorized agent of Barrow Industries Inc.  
dba Merrimac Textile Co.  
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

**Typed or printed name and date ▼** If this application gives a date of publication in space 3, do not sign and submit it before that date.

Naomi W. Norcott

Date ▶ April 26, 2002

Handwritten signature (X) ▼

X

*Naomi W. Norcott*

Certificate  
will be  
mailed in  
window  
envelope  
to this  
address:

Name ▼ Naomi W. Norcott  
Samuels, Gauthier & Stevens LLP  
Number/Street/Apt ▼ 225 Franklin Street, Suite 3300  
City/State/ZIP ▼ Boston, Massachusetts 02110

**YOU MUST**

- Complete all necessary spaces
- Sign your application in space 8

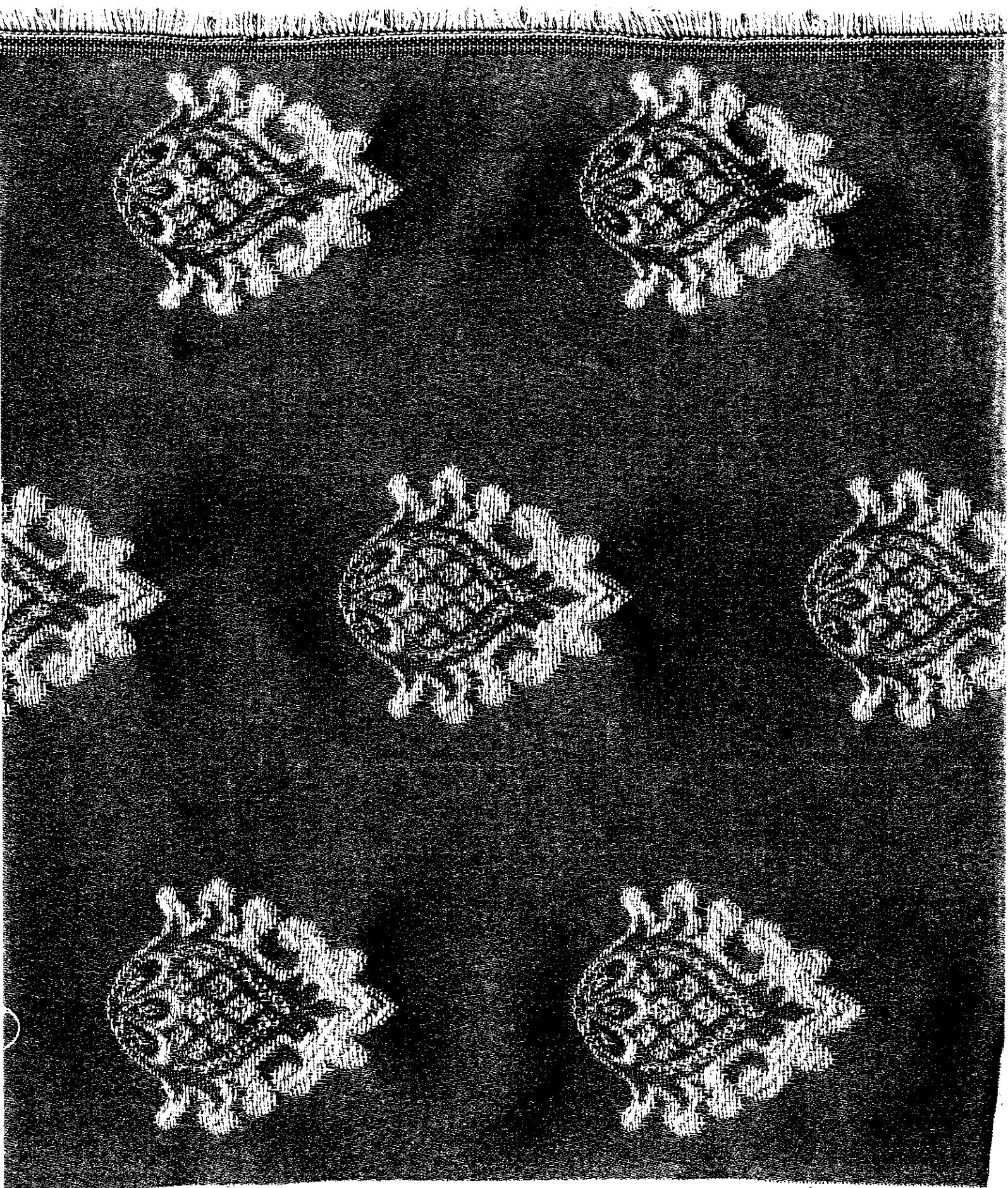
• SEND ALL 3 ELEMENTS  
IN THE SAME PACKAGE

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

As of July 1, 1999  
the filing fee for  
Form VA is \$30

MAIL TO

Library of Congress  
Copyright Office  
101 Independence Avenue, S E  
Washington, D.C. 20559-6000



JCPENNEY

04:09 PM 9468 2746/261 652

722/9038/010301	CHAT VALANCE
QTY 1	40.00
SALE DISC	8.01 -
CERT INCENT 10.000%	3.20 -
***TOTAL DISCOUNTS	11.21 -
YOUR PRICE	28.79T
TOTAL CERTIFICATE	3.20 -
SUBTOTAL	28.79
SALES TAX 8.250% 75240	2.37
XXXXXXXXXXXX3479/XXXX/027376005/M	
VISA	31.16
TTL 08/27/03	31.16

YOUR TOTAL SAVINGS TODAY 11.21 -

CARDHOLDER ACKNOWLEDGES RECEIPT OF  
GOODS/SERVICES IN THE AMOUNT SHOWN AND  
AGREES TO PAY FOR THEM ACCORDING TO  
CREDIT CONTRACT WITH CARD ISSUER.

THANK YOU

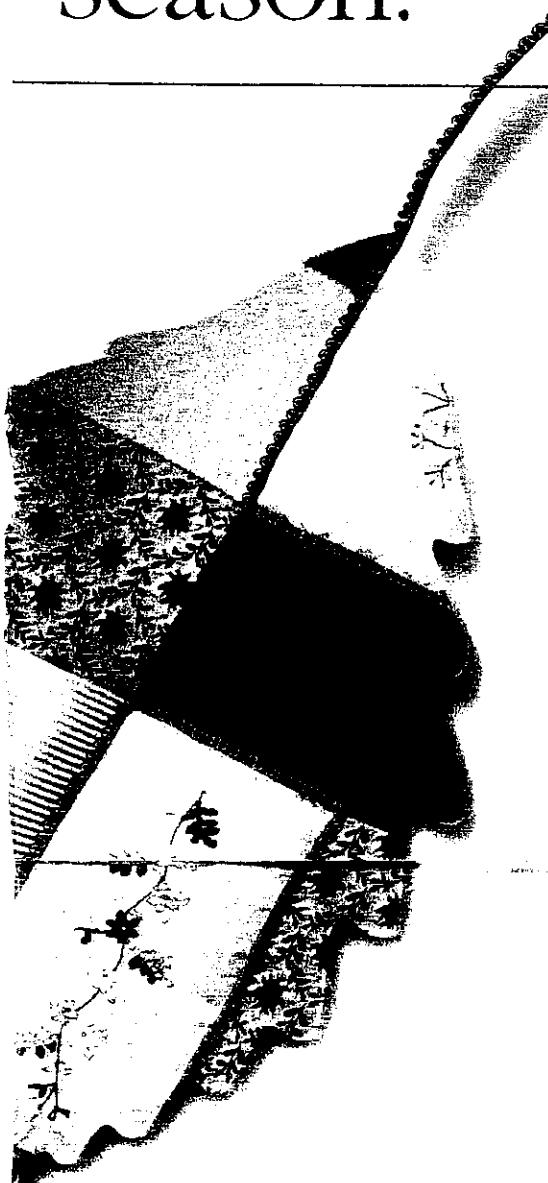
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CUSTOMER COPY

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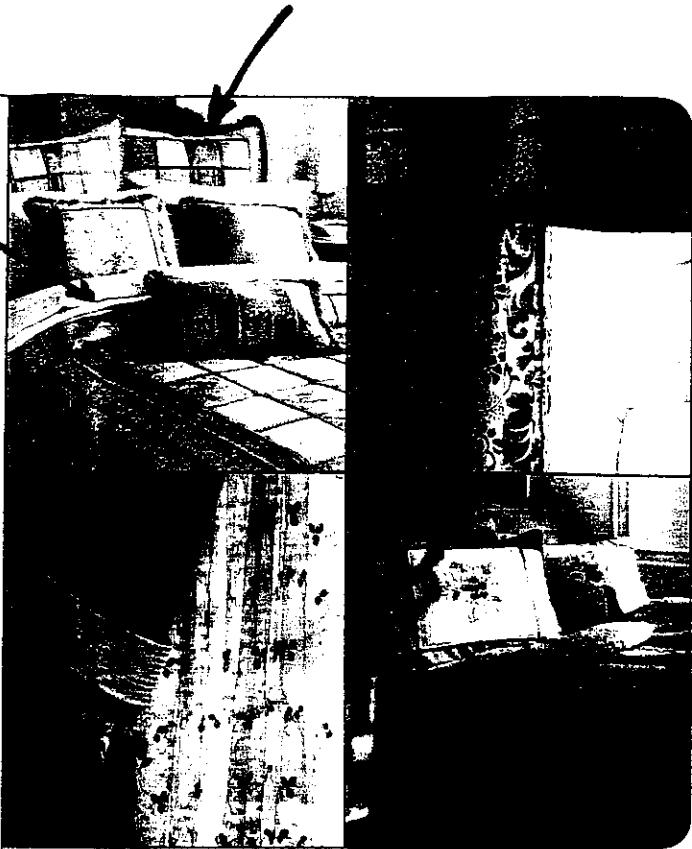
Wake up to a new



season.



Imagination comes home



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home  
collection

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item 1 of

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## Chateau Bedding Coordinates

Inspired by the rich earthtones of the Italian countryside, this pieced jacquard and chenille ensemble offers both luxury and beauty. In shades of coral rose, olive, bronze, gold, and sandstone.

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Chateau

**Choose your bed size.** [Twin](#) [Full](#) [Queen](#) [King](#) **Queen Selected****Product** (Click on product below for more information)

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<a href="#">Chateau Pillow Sham-Standard</a>	\$
<a href="#">Chateau Pillow Sham-King</a>	\$
<a href="#">Chateau Pillow Sham-Euro</a>	\$
<a href="#">Chateau Tailored Bedskirt-Queen</a>	\$
<a href="#">Chateau Accent Pillows-Square</a>	\$
<a href="#">Chateau Accent Pillows-Oblong</a>	\$
<a href="#">Chateau Window Coverings-63" Panels</a>	\$
<a href="#">Chateau Window Coverings-84" Panels</a>	\$1
<a href="#">Chateau Window Coverings-Valance</a>	\$

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tips, styles and combinations to inspire

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